IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 16218 of 2004(E)

PETITIONER:

M/S.LAWRENCE & MAYO (I) PVT.LTD.,
40/822 A, IYYATTIL JUNCTION, CHITTOOR ROAD,
COCHIN-11, REP.BY ITS AUTHORISED SIGNATORY
B.BIJU.

BY ADV. SRI.V.P.SUKUMAR
SRIJAIRAM.V.MENON

RESPONDENTS:
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1. THE INTILLIGENCE OFFICER,
INVESTIGATION BRANCH, COMMERCIAL TAXES,
PALARIVATTOM, COCHIN-25.

2. THE STATE OF KERALA REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIATE,
THIRUVANANTHAPURAM.

3. M/S.AARTEG, 140B, CAMAC STREET KOLKATTA
700017, WEST BENGAL.

ADDL.4. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ERNAKULAM.

ADDL.R4 IS IMPLEADED VIDE JUDGMENT.

R1 AND R2 BY GOVERNMENT PLEADER SRI. K.P. PRADEEP
R3 BY ADV. SRI.P.U.MATHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE DATED 19.12.2003 ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE LETTER DATED 24.12.2003 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF THE LETTER DATED 29.12.2003 SUBMITTED TO THE FIRST RESPONDENT BY THE PETITIONER.

EXT.P4 TRUE COPY OF REPRESENTATION DATED 15.1.2004 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF THE ORDER DATED 30.9.2005 PASSED BY THE SALES TAXER (WC), OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM IN THE CASE OF THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 16218 OF 2004

Dated this the 16th day of November, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. W.P. is filed for direction to the first respondent to grant refund of the amount of tax collected from the petitioner for the work executed by the third respondent. Petitioner's case is that contract was given to third respondent for interior decoration of petitioner's show room at Ernakulam. The contract amount was Rs. 30,75,000/-. The first respondent during inspection noticed payments to contractor by the petitioner without deduction of tax under Section 7B/7C of the KGST Act and demanded tax from the petitioner. Petitioner remitted Rs. 3,60,009/- in terms of the demand by the third respondent. The prayer in the W.P. is for direction to the first respondent to refund the amount paid. Copy of the assessment order of the third respondent is produced in Court as Ext.P5. On going through the assessment order, I find exemption is granted on Rs. 20,10,580/- towards labour charges. The tax liability was assessed by the Sales Tax Officer (WC) at Rs.

27,705/-. It is not known on what basis the first respondent has determined the liability at above Rs. 3 lakhs. Petitioner's case is that this may be an incorrect computation of tax liability and petitioner remitted the amount under compulsion. In any case, Ext.P5 has not become final, and it can even be scrutinised by the Deputy Commissioner under Section 35 of the Act. In view of the difference in tax computation by the assessing officer and the first respondent, I dispose of the Writ Petition with direction to the Deputy Commissioner, Commercial Taxes, Ernakulam, impleaded as addl. fourth respondent to call for the assessment file, peruse the same and if necessary call for the records from the first respondent, verify the computation of tax liability and if any modification is required to Ext.P5 he will do it in accordance with procedure. However if he finds after scrutiny that Ext.P5 assessment is correct, then there will be a direction to the Deputy Commissioner to order credit of the tax paid by the petitioner towards liability under assessment and grant eligible refund to the petitioner, which should be done within two months from the date of receipt of a copy of this judgment.

(C.N. RAMACHANDRAN NAIR)

Judge